Appendix 72-894

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IN THE

Supreme Court of the United States

October Term, 1971

No. .....

WILLIAM B. RICHARDSON,
Petitioner

v.

UNITED STATES OF AMERICA
JOHN CONNALLY, Secretary of the Treasury
S. S. SOKOL, Commissioner of Accounts
Respondent

PETITION FOR A WRIT OF CERTIORARI
Before Judgment
TO THE CIRCUIT COURT OF APPEALS
For the Third Circuit
No. 19,277

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IN THE

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No. .....

WILLIAM B. RICHARDSON,
Petitioner

v.

UNITED STATES OF AMERICA,
JOHN CONNALLY, Secretary of the Treasury,
S. S. SOKOL, Commissioner of Accounts
Respondent

PETITION FOR A WRIT OF CERTIORARI
To The United States Court of Appeals
For the Third Circuit

Petitioner, William B. Richardson, prays that a writ of certiorari issue to review the order of the United States District Court for the Western District of Pennsylvania prior to judgment in the Circuit Court of Appeals in accordance with Rule 20 of the Federal Rules of Procedure for the Supreme Court.

I.
OPINION BELOW

The opinion and order of the District Court was made and entered on June 16th, 1970, dismissing the case and refusing to convene a three-judge court. A copy of the unreported opinion and order is attached as Appendix B. The appellant docketed an

appeal in the Court of Appeals on September 23rd, 1970. Following submission of written briefs and oral argument, and over objection of Appellant, the Court of Appeals appointed an Amicus Curiae pursuant to Rule 29 of the Federal Rules of Appellate Procedure and permitted this Amicus late filing without showing cause therefore (see Appendix C). Accordingly, the United States Court of Appeals for the Third Circuit has never rendered any opinion on the judgment which is here sought to be reviewed.

II.

JURISDICTION

The Court of Appeals has by reasonable calculation delayed a decision until next year by their order of July 28th, 1971 appointing an Amicus Curiae. In view of the important nature of the issues involved and their bearing on the continuity of the Constitutional system as the American People have come to know it, jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1254(1), providing for the granting of a Writ of Certiorari upon the petition of any party before rendition of judgment by the Court of Appeals.

The petitioner began in November, 1967 a conscientious attempt to get this matter heard on its merits. See *Richardson v. Sokol*, 285 F. Supp. 866 (W.D. Pa., 1968); dismissed as a jurisdictional matter 409 F.2d 3 (C.A. 3, 1969), certiorari denied, 396 U.S. 949 (1969). The petitioner believes the case to be of such imperative public importance and so long delayed as to justify the deviation from the normal appellate processes and to require immediate settlement in the Supreme Court.

III.

QUESTIONS PRESENTED

1. Should a three-judge District Court be promptly convened in this case?

2. Is the case of sufficient National importance to merit the Supreme Court's consideration of a guideline opinion on any of the Constitutional issues raised?

IV.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional and Statutory provisions which are relevant to a decision in this case are set out by enumerated title in the Complaint, paragraphs *one* through *six* in Appendix A, pages 1a, 2a, and 3a. Because of the number of such provisions, they are set out in pertinent text in Appendix D in the same order as they appear in the Complaint — grouped and designated by paragraph to correspond to paragraph numbers. These provisions are also included as an "Index Addendum" to facilitate their location in Appendix D.

V.

STATEMENT OF THE CASE

This petition, inter alia, seeks to rescind the judgment of the District Court and accelerate compliance with the three-judge Federal statutes (Title 28 U.S.C. 2282 and 2284 — Appendix D, page 23a). A plaintiff is entitled to a three-judge court at any time a substantial constitutional attack is made upon a Federal statute seeking to enjoin the enforcement of that statute. *Idlewild Liquor Corp v. Epstein*, 370 U.S. 713; 8 L, ed. 2d 794; 82 S. Ct. 1294 (1962): *Schneider v. Rusk*, 372 U.S. 224; 9 L. ed. 2d 695; 83 S. Ct. 621 (1962): *Zemel v. Rusk*, 381 U.S. 1; 14 L. ed. 2d 179; 85 S. Ct. 1271 (1965): reh. den. 382 U.S. 873, 15 L. ed. 2d 114, 86 S. Ct. 17.

The National Security Statutes unconstitutionally authorize civilian elements of the Executive Branch to:

1. Deprive the petitioner of his constitutional right to know the true receipts and expenditures of his government.

2. Deprive the petitioner of assurances that when he pays tax money his money will go into the Treasury and not directly to the Central Intelligence Agency or for some other clandestine expenditure.

3. Falsify government reports.

4. Circumvent constitutional appropriation mandates.

5. Use tax money to make secret "rental of news reporting services" which gives the Executive authority to do clandestinely that which the Constitution (Amendment I — page 28a Appendix D) openly forbids.

6. Raise, maintain, and equip armies composed of foreign and/or indigenous personnel paid and provisioned by tax money for which there is no constitutional authority except by Act of Congress.

7. Purchase, rent, operate and maintain all the equipment essential to military operations coupled with unlimited expenditures of funds for personal services, "including personal services without regard to limitations on types of persons to be employed" contrary to our constitutional mandates that the Armed Forces are to be ruled and regulated by the Congress.

8. Conduct para-military operations with funds not appropriated within a two year period prior to expenditure.

9. Maintain and fund an agency with clandestine, unaccountable and unregulated procurement authority that unquestionably uses tax money ultra vires the constitutional authority for taxing and spending.

10. Use the President of the Senate as an Executive Officer on the National Security Council contrary to our separation of powers belief.

All of the concepts of unconstitutionality have been carefully set out in the Complaint (Appendix A) along with the customary prayer for equitable relief.

The Petitioner believes that by incorporating the Complaint in Appendix A by reference at this point, a sufficient Statement of the Case has been made for convening a three-judge court. There remains then only the question on Constitutional issues (question number two) and whether it would be proper for the Supreme Court to rule in advance on any selected Constitutional

question raised by the Complaint and associated Constitutional and Statutory provisions.

Article III Section 1 of the Constitution states: "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. - - -" and in Section 2 of Article III proclaims: "(1) The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, - - -." (Appendix D page 23a). While the Supreme Court would not issue an injunction (Title 28 U.S.C. 2282 and 2284, page 35a and 36a of Appendix D) or a mandamus (Title 28 U.S.C. 1361 page 36a of Appendix D) where Congress has specifically delegated original jurisdiction to the District Courts, the Supreme Court does have statutory authority in Title 28 U.S.C. 2201 and 2202, in addition to their Article III authority, to issue declaratory relief because declaratory relief in those statutes is not assigned as original jurisdiction to the District Courts (Appendix D. page 37a) but is within the province of "any court" of competent jurisdiction.

The Motion to Dismiss in this case contains an alleged affirmative defense: "res judicata" and "law of the case" (see the Motion to Dismiss at end of Complaint, Appendix A, page 17a). For this reason, the petitioner has maintained that this Motion is actually a responsive pleading or answer but this would be immaterial because it was early established that the Supreme Court will assume jurisdiction to rule on the constitutionality of a Federal statute even in the absence of any response or appearance of the defendant. *Marbury v. Madison*, 1 Cranch 137, 2 L. Ed. 60, (1803). Incidentally, this was one of the most important decisions handed down by the Supreme Court. It was many years before the Declaratory Judgment Acts.

There is certainly statutory authority and case law precedent for declaring a constitutional repugnancy whenever the offending statute is before the Court and especially where the repugnancy is determinable by a simple examination of the statute in question and by comparing it to a constitutional limitation. In the absence of having this comparison brought to their atten-

tion, the Court will, on its own, measure the statute against the requirements of the Constitution. The petitioner respectfully suggests that the Supreme Court will find Constitutional issues raised by the Complaint warranting immediate resolution as guideline assistance to the three-judge District Court or as imperative declaratory relief at this time. In particular, the petitioner respectfully says that Title 50 U.S.C. 403f (32a, Appendix D) and Title 50 U.S.C. 403j (33a, Appendix D) are repugnant to Article I, Section 9, Clause (7) (28a, Appendix D) of the United States Constitution and that the repugnancy is clear on its face and should be so declared at this time.

> "- - - The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an Act of Congress is appropriately challenged in the courts as not conforming to the Constitutional mandate the judicial branch of the Government has only one duty — to lay the Article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment on the question. - - -" *United States v. Butler*, 297 U.S. 1, 62, 63; 80 L. Ed. 477, 486, 487. (1936).

The United States is entirely a creature of the Federal Constitution; its power and authority has no other source and it can only act in accordance with all the limitations imposed by the Constitution. *Reid v. Covert*, 354 U.S. 1 at pages 5 & 6; 77 S. Ct. 1222; 1 L. Ed 2d 1148, 1157: (1956): *Gibbons v. Ogden*, 22 U.S. 1 at page 33, 9 Wheat 1, 33; (1824): *Martin v. Hunter's Lessee*, 14 U.S. 303 at page 326; 1 Wheat 303, 326; 14 L. Ed. 96, 102 (1813). In *Reid v. Covert* the Court explained (at page 6) that when a United States citizen goes to a foreign land he has not waived his protections under the Constitution; similarly, when a Government agency is commissioned to handle secret matters originating outside the territorial United States (the CIA also has offices in every major stateside city) it is not free from the restraints of the Constitution. Of course, if it is so secret that no one knows what it is doing or what it is spending, it would, as a

matter of fact, be free of any constitutional restraint. But when, as in this case, the violations are obvious and generally known, failure of the judiciary to act decisively and promptly can sound the death knell to constitutional law. In such an event, history will mark us as a milquetoast society ruled by a hierarchy of government "servants" whose source of power emanates from a stamp pad and a secret stamp and whose panacea for overt restraint is to act covertly *without* restraint on the theory that only those aspects of government known to the people come within the purview of constitutional mandates. Thus the people would then have in toto what in part they have today: the classification of documents, materials, funds, and agencies to circumvent embarrassment of the Government not because of disclosure to a foreign power but because of disclosure to the American people.

> "Time has proven the discernment of our ancestors; - - - those great and good men foresaw that troublesome times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism; but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the power granted to it which are necessary to preserve its existence - - -" *Ex parte Milligan*, 4 Wall 2, 118; 18 L. Ed. 281, 295 (1866).

If a litigant, a United States citizen, can be prevented from litigating genuine constitutional issues because the agency under attack is super secret in funding and operation and has a foreign

mission associated with the National Security, then the American people are grossly misled on the efficacy of their Constitution or that it applies uniformly to the Government which they created.

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of Government is to afford that protection. In Great Britain the King, himself, is sued in the respected form of a petition, and he never fails to comply with the judgment of his Court." *Marbury v. Madison*, 1 Cranch 137, 163; 2 L. Ed. 60, 69 (1803).

The petitioner respectfully submits that the Supreme Court has the Article III power to decide any of the Constitutional issues raised by the complaint and pleadings in this case at this time subject to no restriction except that which the Court itself would impose.

> "The Constitution was not formed merely to guard the states against danger from foreign nations, but mainly to secure union and harmony; for if this object could be attained; there would be but little danger from abroad; - - -" *Ableman v. Booth* (Wis. 1859) 62 U.S. 517, 21 Howard 517, 16 L. Ed. 169 at p. 173.

> "The grant of judicial power is not confined to the administration of laws passed in pursuance to the provisions of the Constitution, nor confined to the interpretation of such laws; but, by the very terms of the grant, the Constitution is under their view when any Act of Congress is brought before them, and it is their duty to declare the law void, and refuse to execute it, if it is not pursuant to the legislative powers conferred upon Congress." *Ableman v. Booth*, (Wis. 1859) 62 U.S. 523, 21 Howard 523, 16 L. Ed. 169 at p. 175.

VI.

REASONS FOR GRANTING THE WRIT

Resolution of the issues on the merits in this case does not permit delay. Considering that written briefs under the Court of

Appeals order of July 28th, 1971 (Appendix C) will not be completed until November 15th; that oral arguments are tentatively planned; that the holiday season begins with Thanksgiving and does not end until after the first of the year; one can readily see that it will be well into 1972 before the Circuit Court will decide if this case is to be heard on its merits. Too late, in fact, to affect the Treasury report due in January, 1972.

Meantime, the United States citizen taxpayer underwrites the continuity of a repugnant and potentially dangerous governmental anomaly which is fast becoming a permanent fixture and whose charter will soon become irrevocable — assuming this is not already a fait accompli. For twenty-two years now the people have been financing this unprecedented means of undercover propaganda, conducting government, creating and funding armies, and disposing of the Nation's fiscal resources.

To the petitioner, the urgency of having this case resolved on its merits is too plain to require elaboration. The Circuit Court of Appeals has been adequately apprised of the applicable law. A recent *right to know* case, not too much different from the one being presented by the appellant, was initiated and decided during the month of June this year including review and opinion by the Supreme Court. *New York Times v. U.S.*, ...U.S....., 91 S. Ct. ....., 29 L. Ed. 2d 822, (1971). To misinform the people of the United States or to clandestinely authorize governmental control of news reporting services is to defraud the people of their *right to know* the honest details of Government and effectively curtails their power to govern.

> "There can be no limitation on the power of the people of the United States." *Hauenstein v. Lynham*, 100 U.S. 483, 25 L. Ed. 628, 630 (1880)
>
> "Yet in the last analysis it is not merely the opinion of the editorial writer, or of the columnist which is protected by the first amendment. It is the free flow of information so that the public will be informed about the Government and its actions."
>
> From Judge Gurfein's opinion in the case of the *U. S. v. the New York Times*. Taken from the New York Times, "Text of Gurfein Opinion - - - " page 26, Sunday Edition, June 20, 1971.

It is axiomatic that a magnanimous and innovative social contract breeding intelligent and aggressive constituents will, from time to time, develop those who patriotically and inadvertently misapply the fundamental law to meet the exigency of a particular governmental problem. In the present case, if just a little more thought were applied, it would be possible to see that the practical effect of such action was to distort and debase, and ultimately destroy, that which they would protect. The history of government quite clearly illustrates that this is how power is transposed from the many, to the few, and finally to the one.

Fortunately, a citizen suffering deprivation of rights as a result of such action and recognizing its inherent evil can turn to the judiciary for help providing he can survive and surmount the monumental technicalities of pleading. Unfortunately for an ordinary citizen who seeks no remuneration except the dividends of good government and the conservation of tax money, constitutional litigation can come at a high price. It is said to be contrary to the spirit of the Federal rules of Civil Procedure for a court to avoid a decision on the merits on the basis of mere technicalities. *Foman v. Davis*, 371 U.S. 178, 181 (1962).

VII.

CONCLUSION

For the foregoing reasons it is respectfully submitted:

(1) This petition for a Writ of Certiorari should be granted.

(2) That on the basis of the record a three-judge District Court be promptly convened.

(3) That the Supreme Court exercise supervisory control over the conduct of this litigation by:

a — Issuing a guideline opinion.

b — Postponing argument before the Supreme Court except for appealable issues arising from the hearing by the three-judge tribunal.

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APPENDIX A

IN THE
United States District Court
FOR THE
Western District of Pennsylvania

CIVIL ACTION NUMBER 70 23

WILLIAM B. RICHARDSON,
Plaintiff,

v.

UNITED STATES OF AMERICA,
JOHN CONNALLY, Secretary of the Treasury,
S. S. SOKOL, Commissioner of Accounts,
Defendants.

COMPLAINT

I. GENERAL LEGAL ALLEGATIONS

A. *On Jurisdiction*

(1.) Jurisdiction is founded on Article III, Section 2, Clause (1), of the United States Constitution and the laws of the United States as follows:

title 28 USCA sect 1346(a) (2) — based on Constitution.
title 28 USCA sect 1361 — mandamus to compel agency.
title 5 USCA sects 701 thru 704 — review of agency action.
title 5 USCA sect 552(a) (3) — enjoin agency.

B. *On Basis of Action*

(2.) The action arises under the Constitution of the United States; the non-jurisdictional portions of that Constitution giving basis to this complaint are:

Article I Section 3 Clause (4) — Vice-President — Duties.
Article I Section 7 Clause (2) — Definition of "Law".
Article I Section 8 Clause (1) — Taxing and Spending
Article I Section 8 Clause (12) — Military Appropriation Limits.
Article I Section 8 Clause (14) — Land and Naval Forces.
Article I Section 9 Clause (7) — Appropriation and Accounting.
Amendment I (Bill of Rights) — Freedom of Speech and Press.

(3.) The action arises under the laws of the United States relative to the National Security as follows:

title 50 USCA sect 401 — declaration of purpose
title 50 USCA sect 402 — National Security Council
title 50 USCA sect 403 — Central Intelligence Agency
title 50 USCA sect 403a — CIA Act — definitions
title 50 USCA sect 403b — CIA Act — Judicial Notice
title 50 USCA sect 403c — CIA Act — procurement
title 50 USCA sect 403f — CIA Act — general authority
title 50 USCA sect 403j — CIA Act — appropriation authority

(4.) This action is suggested in part by criminal code title 18 section 1001 in-so-far as that statute proclaims governmental policy but the defendant, UNITED STATES OF AMERICA, has countered its own policy directives through unconstitutional legislation exonerating the natural defendants in this case. No further reference to this statute is set out in this complaint.

(5.) This action arises under the Code of Federal Regulations, title 31 section 270.3(a)(b) in-so-far as it supplements the Administrative Procedure Act cited para (1.) above (title 5 USCA 701 et seq.) and defines final agency action in regard to requests for records from the Commissioner of Accounts.

C. *Nature of Proceeding*

(6.) This is a proceeding for an Injunction pursuant to the provisions of title 5 USCA sect 552(a)(b), title 28 USCA sect 2282, and title 28 USCA sect 2284; for a Mandamus pursuant to title 28 USCA sect 1361; and for a Declaratory Judgment pursuant to the provisions of title 28 USCA 2201 and 28 USCA 2202.

II. PLAINTIFF

(7.) Plaintiff is a resident of Greensburg, Pennsylvania, a member of the electorate, and a loyal citizen of the United States. He is furthermore a taxpayer paying Federal income taxes and other Federal taxes.

III. DEFENDANTS

(8.) The defendants are:

a. the limited sovereign, UNITED STATES OF AMERICA, who has consented to be sued by statutory enactment.

b. the Secretary of the Treasury for the sovereign defendant, Mr. JOHN CONNALLY, with offices in Washington, D. C. As Secretary of said Treasury, this defendant is head of the depository for all public money held by the Federal Government and is bound by Federal laws to honestly and faithfully account for all receipts and expenditures as prescribed by the Constitution.

c. the third defendant is Mr. S. S. SOKOL, Commissioner of Accounts, Fiscal Service, United States Treasury, with offices in Washington, D. C. who has been delegated responsibility for honest and faithful reporting of the receipts and expenditures of all public money and who represents that his department publishes the document required by Article I, Section 9, Clause (7) of the United States Constitution.

IV. STATEMENT OF CASE

A. *Background Information*

(9.) On May 12, 1967, the plaintiff wrote the Government Printing Office saying that he desired to obtain the documents published by the Government in compliance with Article I Section 9 Clause (7) of the United States Constitution. Under date of August 9, 1967, a reply was received from the Treasury Department, Fiscal Service, Bureau of Accounts explaining that they produced this document and that "This report is now known as the 'Combined Statement of Receipts, Expenditures, and Balances of the United States Government'" (attached to this letter were copies of the monthly and daily reports. Examination of these reports showed no listing for the operation of the CIA). This letter was signed by H. A. TURNER, Deputy Commissioner for Central Accounts and Reports. The plaintiff wrote Mr. TURNER on August 21st, 1967 and quoted part of the CIA Act and enquired if this did not operate "to cast reflection upon the authenticity of the Treasury's Statement?" Also, the plaintiff enquired how he could receive the expenditures of this Agency. Under date of August 24th, 1967, Mr. TURNER replied saying that plaintiff had only quoted a part of the Act and directing plaintiff's attention to further sub-sections to be read and stating in conclusion: "We have no other information available with respect to the Agency mentioned in your letter." On September 25th, 1967, the plaintiff wrote Mr. TURNER setting out essentially that (1) the Constitutional mandate was clear (2) that the report of the Treasury should include all public money (3) that such report should be published for the benefit of the public (4) that if their reports are to be represented as complying with Article I Section 9 Clause (7) of the Constitution, they should immediately terminate their present methods of reporting, and (5) that they should present the matter to the Attorney General for a determination as to what should be published.

(10.) Under date of October 24th, 1967, Mr. S. S. SOKOL, Commissioner of Accounts, Fiscal Service, Treasury Department, replied to plaintiff's letter of September 25th saying that they would not cease publication of their documents and explaining

that once a statute was on the books, he was prohibited by established practice from requesting an opinion as to its constitutionality. Further, Mr. SOKOL stated: "All the receipts and expenditures of the Government are published in the Secretary's reports; however, by statute, the details of receipts and expenditures for the above Agency (CIA) are not available."

B. *Statement on Constitutional Repugnance*

(11.) The plaintiff cannot obtain a document that sets out the expenditures and receipts of the Central Intelligence Agency including the amounts appropriated for this Agency; instead, he is asked to accept a fraudulent document. The Treasury Department's action is final agency action on his demands. Upon authority of the United States Constitution, he is entitled to ask for and receive a reliable publication that makes sense from the accounting standpoint.

(12.) The Central Intelligence Agency Act is repugnant to the Constitution of the United States in several ways which will be shown; but primarily, and most prominently, it operates to falsify the Regular Statement and Account of All Public Money. For the Government to spread the appropriations, receipts and expenditures of this Agency throughout a document diabolically titled to resemble the wording of Article I Section 9 Clause 7 and then represent it as complying with the Constitution is a misrepresentation inconsistent with responsible government. This is especially shocking when that government exists only by virtue of a social contract where-in the People have relinquished certain powers in the form of delegated authority none of which included the authority to commit fraud on them. The only logical conclusion that can be drawn from such behavior is that the Federal Government views the American People as a potential enemy against whom the Government must be protected at all cost.

(13.) No one wants to destroy the Central Intelligence Agency; or even curtail its activities in the area of coordination, correlation, collection, evaluation and dissemination of Intelligence if these are the only areas within which the Central Intelligence

Agency operates; and, accordingly, there would be no need to usurp Constitutional authority. It should be a relatively simple matter to write legislation allowing ample flexibility of operation, protection of intelligence sources and methods, reporting under Article I Section 9 Clause (7), and for imposition of stringent rules and regulations to safeguard American ideals.

(14.) Besides the irregular accounting engendered by the CIA Act, the Federal Government has no authority to create a para-military organization and give it perpetual funding; no authority to create and fund a para-military organization over which it has relinquished the rule-making responsibilities associated with the land and naval forces; nor can it provision such an organization with "personal services, including personal services without limitations on types of persons to be employed — - -" and "purchase, maintenance, operation, repair - - - aircraft, and vessels of all kinds."

(15.) Furthermore, the Federal Government does not have the authority to create an organization, fund it clandestinely, and empower it to purchase news reporting services. The temptation for ambitious men to use such unprecendented power as a weapon of intimidation to stifle free speech and freedom of the press is too great.

(16.) If it is assumed that the document produced by the Treasury Department and titled "Combined Statement of Receipts, Expenditures and Balances of the United States Government" is intended by the Government to be the fulfillment of Article I Section 9 Clause (7) (and this is what they represent it to be); then, the following situation exists with regard to CIA funding:

a. Such funding and reporting practices prevent the receipts and expenditures of the Central Intelligence Agency from becoming available to the producer of what should be the Regular Statement and Account of the Receipts and Expenditures of All Public Money and forces on the People an irregular statement and account.

b. Such funding and reporting practices authorize collusion between the Central Intelligence Agency, the Bureau of the Budget and "other agencies" to transfer public money in such a manner that certain so-called receipts and expenditures of the "other agencies" are transfers to and from the Central Intelligence Agency and not, in fact, receipts and expenditures of those "other agencies."

c. Such funding and reporting practices authorize depositories of public money within other agencies that draw on the Treasury to insulate the Central Intelligence Agency from any record of having drawn public money from the only Constitutional depository of record within the Federal system as far as the People are concerned.

d. Such funding and reporting practices promote double dealing in government finance by taking money drawn from the Treasury "in consequence of appropriations made by law" which is limited in use to the mission of the drawing agency then transfering this money to the Central Intelligence Agency without limitation on spending and without accountability.

e. Such funding and reporting practices undermine public confidence in the Government's ability to produce a regular statement and will eventually be calamitous.

(17.) There are additional Constitutional repugnancies associated with the National Security Statutes which adversely affect funding and spending. These are stated and clarified under part F (Statement on Declaratory Findings).

C. *Statement on Federal Taxpayer's Suit*

(18). The plaintiff is taxed by the laws of the United States on income and through other forms of taxation. The money extracted from him should be deposited in the Treasury of the United States under the direction and control of the defendant CONNALLY. This defendant has no authority to release money from the Treasury except "in consequence of appropriations made by law." When an appropriation establishes a credit in the

Treasury for a particular agency, that agency and no other can draw on that credit. The Congress has no authority to pass statutes that countermand Constitutional mandates. It is obvious from simple reading of the statutes on the National Security (cited: page No. 1 this complaint, para (3.)) that certain mandates incorporating specific limitations and restraints on the spending power have been breached.

(19.) The Congress has exceeded its taxing and spending power under Article I Section 8 of the Constitution. In addition, the laws relative to the National Security cited in paragraph (3.) page No. 1 of this complaint exceed specific constitutional limitations and restraints on the taxing and spending power. These specific limitations and restraints are further described and clarified in part F (Statement on Declaratory Findings), paragraphs (26.) through (54.).

(20.) Accordingly, the taxpayer's money is being extracted and spent in violation of specific Constitutional protections against such abuses of legislative power and such an injury is appropriate for judicial redress.

D. *Statement on Duty Owed the Plaintiff*

(21.) Defendant SOKOL has been delegated the authority to prepare and publish for public consumption the report ordered by Article I Section 9 Clause 7 of the United States Constitution. Defendant SOKOL does not publish the report as required by the Constitution but represents that he does. Defendant SOKOL refuses to take any steps to bring his report up to the standards required by the Constitution and he relies on unconstitutional statutes as his authority which, he says, he cannot question once the statutes are on the books.

(22.) The Commissioner of Accounts is duty bound to deliver to the plaintiff a document that complies with Article I Section Clause (7) of the Constitution. Accordingly, the plaintiff has been denied a Constitutional right arising from deliberate actions of his Government in passing legislation purposely designed to defeat the Constitutional mandates.

(23.) Wherefore, the plaintiff can maintain this action in the nature of a mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff and such an action will have judicial cognizance.

E. *Statement on Appeal from Final Agency Action*

(24.) Part A (Background Information) of this section titled "Statement of Case" gives a resume of plaintiff's written demands on the Commissioner of Accounts and the Commissioner's reaction thereto. Significant among these demands were (1) that plaintiff desired the expenditures of the Central Intelligence Agency, and (2) that the Commission's non-compliance with the Constitutional mandate was so flagrant that the Commission should immediately discontinue production of their reports until the matter was thrashed out within the Executive Departments and all public money properly accounted for and/or reported. The Commissioner's reply was to deny, in effect, that the document he produced transgressed the Constitutional directives and that he could do nothing further in the absence of a court ruling. This amounted to final agency action as described in title 31 section 270.3(a)(b) of the Code of Federal Regulations headed "Availability of Records" and is specifically applicable to the Commissioner of Accounts when requests for records are denied by him.

(25.) Accordingly, the plaintiff has suffered legal wrong because of agency action and is entitled to judicial review and corrective action.

F. *Statement on Declaratory Findings*

WHEREFORE, the plaintiff demands that the Court adjudge:

(26.) That Congress and the President, like the courts, possess no power not derived from the Constitution and the United States is entirely a creature of the Federal Constitution; its Power and authority h as no other source and it can only act in accordance with all the limitations imposed by the Constitution.

(27.) That the rights and liberties of citizens of the United States are not protected by custom and tradition alone, they are preserved from the encroachment of government by express provisions of the Federal Constitution.

(28.) That the language of the Federal Constitution where clear and unambiquous must be given its plain evident meaning.

(29.) That the prohibitions of the Federal Constitution are designed to apply to all branches of the National Government and they cannot be nullified by the Congress and the Executive combined.

(30.) That Article I Section 9 Clause (7) of the Constitution of the United States acts as a limitation and restraint on the taxing and spending clause of that Constitution.

(31.) That Article I Section 9 Clause 7 incorporates by reference Article I Section 7 Clause 2 of the United States Constitution and the two articles act as a limitation on the taxing and spending clause specifically requiring hat no money shall be drawn from the Treasury except on authority of a Bill of Appropriation passed by both houses and signed by the President or passed over his veto and setting forth the amount of appropriation, the name of the government agency to be credited by the Treasury, and the time period during which the credit shall be available to the agency.

(32.) That Article I Section 8 Clause 12 acts as a limitation on the taxing and spending clause and, acting in conjunction with Article I Section 9 Clause 7 and Article I Section 7 Clause 2, limits the appropriation of money to raise and support armies to a bill duly passed by both houses and signed by the President or passed over his veto; and said bill cannot appropriate such money beyond a two year period.

(33.) That the Freedom of Speech and Freedom of the Press provisions of Amendment I act as a limitation and restraint on the taxing and spending provisions of Article I Section 8

Clause (1) and specifically deny the Federal government any right to authorize undisclosed and indiscriminate rental of news reporting by any agency of government; such abuse of the Bill of Rights would be further magnified if such rental funds were unlimited and unaccounted for.

(34.) That a receipt of public money occurs at any time a government agency receives credit in its Treasury account for funds based upon a Bill of Appropriation. This is a checking account established for that agency. Thus, Article I Section 9 Clause (7) meant that all appropriations were to be reported in the "regular statement and account of the receipts and expenditures of all public money;" such report to be by heads of appropriation whose access to public money is based only on the credit accrued in their Treasury account.

(35.) That an expenditure of public money means a laying out of public funds in a transaction following which that money is no longer public money. Thus, the transfer of public money from one government agency to another does not constitute an expenditure and should not be reported as such in any document purporting to be published in compliance with Article I Section 9 Clause 7.

(36.) That it was the intent of Article I Section 9 Clause (7) to make available to every United States citizen a regular statement and account of the receipts and expenditures of all public money published by an instrument of government having a thorough knowledge of the flow of public money in and out of the Federal structure and having indisputable access to all receipts and expenditures where public money is concerned.

(37.) That it is a condition attached to the use of public money by a government agency that its receipts and expenditures shall be available to the instrument of government producing the statement and account required by Article I Section 9 Clause (7) and no agency can be the subject of government classification, security or otherwise, that would prevent its inclusion. Furthermore, legislation is inherently defective that orders the courts to

take judicial notice of the existence of an Agency and at the same time orders the Treasury Department to treat the same Agency as though it did not exist.

(38.) That the annual document titled "Combined Statement of Receipts, Expenditures and Balances of the United States Government" prepared by the Treasury Department and offered for sale by the Government Printing Office is not, in fact, the document required by Article I Section 9 Clause 7 of the United States Constitution but is represented by the Government as identical.

(39.) That no document is now being published for information of the People that meets the requirements of Article I Section 9 Clause 7.

(40.) That failure to publish a Regular Statement and Account of the Receipts and Expenditures of All Public Money and make it available to the People and to the plaintiff is a mockery of delegated authority and a violation of plaintiff's constitutional rights when he demands such a document from his Government.

(41.) That when the Government produces a document purporting to be a constitutionally founded document giving a regular statement and account of all public money and setting out the appropriations, receipts and expenditures as they relate to each government agency but in correspondence they admit that there is one Agency which receives and spends public money but which they have no information on, then their document is fraudulent as to the People for whom it is prepared especially when the appropriations, receipts and expenditures of the renegade Agency are spread throughout the entire document allegedly complying with Article I Section 9 Clause (7).

(42.) That it was never intended by the Founding Fathers that appropriations, receipts and expenditures of the United States Government were to be reported in any other manner than in a manner that made sense.

(43.) That subterfuge can play no part in drawing money from the Treasury nor in producing the regular statement and account of the receipts and expenditures of all public money.

(44.) That when the plaintiff is tendered a document held out as complying with Article I Section 9 Clause (7) but in fact it is a spurious document clearly abrogating the Constitutional requirement, then this is a fraud practiced on the plaintiff and a violation of his Constitutional rights.

(45.) That the provision in 50 USCA sect 403f(a) stating: "and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations" is countermanding of Article I Section 9 Clause 7 and Article I Section 7 Clause 2 and is an affront to the American People since it serves no useful purpose except to deceive everyone including those desiring, and entitled to, an honest accounting of public money.

(46.) That the wording in the Central Intelligence Agency Act (50 USCA sect 403f(a)) to the effect: "Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a - 403j of this title without regard to limitations of appropriations from which transferred;" constitutes an unlawful delegation of governmental authority because there is no such thing as an "unlimited appropriation" and any attempt to so fund a government agency is repugnant to both Article I Section 9 Clause (7) and Article I Section 7 Clause (2).

(47.) That the statement as to appropriations in title 50 USCA 403j(b): "The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds" repeals all laws governing the expenditure of public money in the hands of this one Agency and is self-incriminating and unworthy of comment.

(48.) That the statement "and for objects of a confidential, extra-ordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified" is too broad and comprehensive and is giving this Agency more power than the Federal Government itself has — being specifically repugnant to Article I Section 9 Clause 7 of the Constitution. The interpretation of this provision has resulted in nothing being reported.

(49.) That the CIA Act (50 USCA sect 403f(a)) is repugnant to the United States Constitution wherein it states that "the Central Intelligence Agency is authorized to --- (a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget ---" because such sums could be transferred from collection agencies thus circumventing entirely the Treasury of the United States; furthermore, the delegation of such authority to the Bureau of the Budget to accomodate the funding of the Central Intelligence Agency so that this Agency never appears on the regular statement and account of all public money and has perpetual appropriation status is a deliberate fraud on the People of the United States and permits the Bureau of the Budget to operate outside the narrow lines of governmental authority delegated to the Federal Government by the People of this Country being especially repugnant to Article I Section 9 Clause 7, Article I Section 7 Clause 2, Article I Section 8 Clause 12, and Article I Section 8 Clause 14.

(50.) That the power granted to Congress by Article I Section 8 Clause 14 of the Federal Constitution to make rules for the government and regulation of the land and naval forces does not extend to civilians. Thus, Congress has delegated authority in the CIA Act to the Executive for an organization which, in some operations, is para-military, over which Congress makes no rules for its government and regulation and to attempt to fund such an Agency is ultra vires the Constitutional authority of Article I Section 8 Clause 1 because Article I Section 8 Clause 14 limits spending to those organizations composing the land and naval forces when the rules and regulations for such organizations are made by Congress.

(51.) That the Central Intelligence Agency is, in part, a para-military organization and that it is an unlawful delegation of legislative authority and a violation of Article I Section 8 Clause 12 of the United States Constitution to automatically fund this Agency on a continuing basis without regard to the two year limitation on such funding.

(52.) That the Central Intelligence Agency is, in part, a para-military organization and that it is an unlawful delegation of legislative authority and a violation of Amendment I of the Bill of Rights to give such an organization automatic funding without limitation or accountability for the undisclosed and indiscriminate "rental of news reporting services" such being in derogation of the Freedom of Speech and Freedom of the Press provisions.

(53.) That it is an unlawful incorporation by reference to write-in the Central Intelligence Agency as an additional participant under the "Armed Services Procurement Act of 1947" (Public Law 413, Eightieth Congress, second session) by making reference to said Act and the relationship thereto of the Central Intelligence Agency in "The Central Intelligence Agency Act of 1949" (Public Law 110, 81st Congress, title 50 USCA sect 403c). That notwithstanding, this procedure was adopted, but subsequently, the "Armed Services Procurement Act of 1947" was repealed and replaced by the Act of August 10, 1956 "Procurement Generally" (title 10 USCA sects 2301 thru 2314) and the subsequent Act has never been incorporated by reference, or otherwise, into the CIA Act; accordingly, the CIA is without any restriction as to its procurement procedures; therefore, the People of this Country are confronted with the untenable situation of a secret organization with unlimited access to the United States Treasury, statutably protected from accountability, with the funding system rigged for fraudulent appropriation and accounting of public money, and running wild as far as procurement procedure is concerned.

(54.) That the Vice Presidency of the United States is a Constitutionally ordained office. The duties are prescribed by the

Constitution. No other duties can be assigned this office. As a practical matter, the Vice-President is not a member of the Executive nor of the Legislature and is not subject to assignment by either. To assign such an elected official to an Executive post on the National Security Council where he can exercise certain control over the expenditures of an organization with unlimited funding and no accountability violates Article I Section 3 Clause (4) of the Constitution in that he is assigned to duties not prescribed by the Constitution and may vote on appropriations which he later takes part in spending.

(55.) That the Vice President of the United States is elected as a member of the Executive but, once in office, he is assigned the duty of presiding over the Senate. After taking office, he is constitutionally bound to work in the legislature. There he is "buried", so to speak, and he is only resurrected in the Executive Branch should the President become incapacitated. By putting the Vice President on the National Security Council, which is purely an instrument of the Executive Department, the Government is breaching the Separation of Powers doctrine.

V. PRAYER FOR RELIEF

(56.) WHEREFORE, plaintiff respectfully prays that upon the filing of this complaint this court give precedence over all other cases on the docket except as to causes the court considers of greater importance and this case to "be assigned for hearing and trial at the earliest practicable date and expedited in every way" as prescribed in title 5 USCA sect 552(a)(3) and that a three Judge Court be especially convened to:

(a.) adjudge, decree and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declaration shall have the force and effect of a final judgment;

(b.) issue a mandamus compeling the defendants to perform their duty to the plaintiff as prescribed by the United States Constitution.

(c.) issue a permanent injunction enjoining the defendants from publishing their "Combined Statement of Receipts, Expenditures and Balances of the United States Government" and representing it as the fulfillment of the mandates of Article I Section 9 Clause 7 until same fully complies with those mandates.

(d.) grant plaintiff such other, additional or alternative relief as may appear to the Court to be equitable.

(e.) grant plaintiff his costs herein.

WILLIAM B. RICHARDSON
149 Westmoreland Avenue
Greensburg, Pennsylvania 15601

— END OF COMPLAINT —

MOTION TO DISMISS

And now comes the United States of America by Richard L. Thornburgh, United States Attorney for the Western District of Pennsylvania, and Thomas A. Daley, Assistant United States Attorney, and moves the Court to dismiss the captioned action for the following reasons:

1. The action is barred by the principles of "res judicata" and "law of the case", the plaintiff having previously brought the action in this Court, and judgment of dismissal having been entered against him, Miller, J., 285 F. Supp. 860, aff'd, 409 F. 2d 3 (3d Cir. 1969).

2. The plaintiff lacks standing to bring the action.

3. No justiciable controversay is presented by the complaint.

4. The complaint fails to state a cause of action upon which relief can be granted.

5. The Court lacks jurisdiction.

— END OF MOTION TO DISMISS —

APPENDIX B

IN THE
United States District Court
FOR THE
Western District of Pennsylvania

CIVIL ACTION NUMBER 70 23

WILLIAM B. RICHARDSON,
Plaintiff,

v.

UNITED STATES OF AMERICA,
JOHN CONNALLY, Secretary of the Treasury,
S. S. SOKOL, Commissioner of Accounts,
Defendants.

MEMORANDUM AND ORDER

WILLSON, Senior District Judge

On January 8, 1970, William B. Richardson filed his complaint in which he named as defendants the United States of America; David M. Kennedy, Secretary of the Treasury; and S. S. Sokol, Commissioner of Accounts for the Secretary of the Treasury. The pro se complaint consists of some 56 numbered paragraphs.

In the complaint plaintiff gave a brief history relating to his contention that the Secretary of the Treasury and the Commissioner of Accounts in publishing the receipts and disburse-

ments of the Government via the Bureau of Accounts failed to list monies expended in the operation of the Central Intelligence Agency. Plaintiff mentions letters to various departments and replies, the last of which is a reply from Mr. Sokol and quoted in part by the plaintiff as follows:

> "'All the receipts and expenditures of the Government are published in the Secretary's reports; however, by statute, the details of receipts and expenditures for the above Agency (CIA) are not available.'"

Plaintiff says in his complaint that the action of the defendants as mentioned is contrary to Article I, Section 9, Clause 7 of the Constitution of the United States, which reads:

> "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law; and a regular Statement and Account of the Recepits and Expenditures of all public Money shall be published from time to time."

Under the circumstances just recited and averred in the complaint in considerable detail, plaintiff avers as a member of the electorate, a citizen of the United States, and a Federal taxpayer that he is entitled to declaratory relief and a mandamus directing the defendants to publish expenditures of the CIA.

In the first instance, this complaint came before The Honorable John L. Miller for a decision as to whether on its face a Three Judge Court was appropriate. On January 16th, 1970, Judge Miller denied the application for a Three Judge Court and directed that the Clerk make an assignment of the case in the usual manner. Thereafter on March 20, 1970, the defendants filed a motion to dismiss, and on April 22, 1970, filed a memorandum in support thereof. On May 19, 1970, plaintiff filed what he styled a motion to quash motion in opposition to convening a Three Judge Court and a motion to convene Three Judge Court without further oral or written argument.

The parties have been heard at oral argument on the motion to dismiss and on plaintiff's contention that he is nevertheless

entitled to a Three Judge Court even though Judge Miller has denied his prior application.

On behalf of defendants, Thomas A. Daley, Assistant United States Attorney, first contends that the plaintiff lacks standing to bring this action. He has cited a prior case by this same plaintiff in *Richardson v. Sokol*, 285 F. Supp. 860 (W. D. Pa. 1968), which is affirmed in 409 F. 2d 3 (3rd Cir. 1969), cert. denied, 396 U.S. 949. Since those decisions, *Flast v. Cohen*, 392 U. S. 83, (1968) was announced by the Supreme Court. Under the cited decisions and considering Article I, Section 9, Clause 7 of the Constitution, the conclusion must be reached *that plaintiff has no standing to bring this civil action.*

But equally important to the decision is the contention of the Government that the complaint presents no justiciable controversy. Mr. Daley cites several statutes which create the CIA and regulate its expenditures: The National Security Act of 1947, 50 U.S.C. 403 as amended, and Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403 (g) as amended. The publication of the details as to the funding of the activities of the CIA has been limited by Congress. Congress has done this in the interest of national security and national defense as well as foreign policy.

It is this Court's view that the subject matter complained of by plaintiff raises political questions in a governmental sense and the subject is not open to a United States District Court for adjudication in any manner.

— END OF OPINION —

ORDER

AND NOW, June 16, 1970, for the reasons stated, the motion of the defendants must be and is granted, and this civil action is dismissed of record.

JOSEPH P. WILLSON
Senior District Judge

APPENDIX C

IN THE
United States Court of Appeals
FOR THE
Third Circuit

No. 19,277

WILLIAM B. RICHARDSON,
Appellant,

v.

UNITED STATES OF AMERICA,
JOHN CONNALLY, Secretary of the Treasury,
S. S. SOKOL, Commissioner of Accounts,
Appellee.

ORDER OF CIRCUIT COURT OF APPEALS

Present: VAN DUSEN and ROSENN, *Circuit Judges,*
and KRAFT, *District Judge.*

After consideration of the briefs, oral argument presented June 25, 1971, the record, the attached letter of the Clerk dated June 30, 1971, and the answering letters of the parties dated July 7 and July 21, 1971,

It is ORDERED that Ralph Spritzer, Esq., 3400 Chestnut Street, Philadelphia, Pennsylvania 19104, is appointed amicus curiae, with leave to file and serve legible, typewritten brief in the above-entitled case on or before October 18, 1971, appellant and appellee to have leave to file and serve legible, typewritten answering briefs on or before November 15, 1971.

BY THE COURT: —

FRANCIS L. VAN DUSEN
Circuit Judge

Dated: July 28, 1971

APPENDIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS REQUIRED BY RULE 23(1d) CORRELATED TO FIRST SIX PARAGRAPHS OF COMPLAINT

Paragraph One of Complaint:

Article III, Section 2, Clause (1) provides as follows:
(Pertinent Text)

Section 2. The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - - - - -

28 U.S.C. sect 1346(a)(2) provides as follows:
(Pertinent Text)

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

(1) - - - not applicable - - -

(2) Any other civil action or claim against the United States, not exceeding $10,000.00 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph. - - - -

28 U.S.C. sect 1361 provides as follows:

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

5 U.S.C. sect 701 provides as follows:

(a) This chapter applies, according to the provisions thereof, except to the extent that —

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter —

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include —

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b) (2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

(Definitions from Title 5 U.S.C. sect 551 incorporated by reference)

(Pertinent Text)

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(8) "license" - - - (not applicable)

(10) "sanction" includes the whole or a part of an agency —

(A) - - -

(B) withholding of relief;

(C) - - -

(D) - - -

(E) - - -

(G) taking other compulsory or restrictive action

(11) "relief" includes the whole or a part of an agency —

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception, or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

5 U.S.C. sect 702 provides as follows:

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

5 U.S.C. sect 703 provides as follows:

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibition or mandatory injunction or habeas corpus, in a court of competent jurisdiction. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

5 U.S.C. sect 704 provides as follows:

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

5 U.S.C. sect 552(a)(3) provides as follows:

((a) Each agency shall make available to the public information as follows):

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

Paragraph Two of Complaint:

Article I, Section 3, Clause (4) provides as follows:

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

Article I, Section 7, Clause (2) provides as follows:

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be recon-

sidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which case it shall not be a Law.

Article I, Section 8, Clause (1) provides as follows:

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Article I, Section 8, Clause (12) provides as follows:

(The Congress shall have Power): To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Article I, Section 8, Clause (14) provides as follows:

(The Congress shall have Power): To make Rules for the Government and Regulation of the land and naval forces;

Article I, Section 9, Clause (7) provides as follows:

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Amendment I to the Constitution provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Paragraph Three of Complaint:

50 U.S.C. sect 401 provides as follows:

In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense; to provide that each military department shall be separately organized under its own Secretary and shall function under the direction, authority, and control of the Secretary of Defense; to provide for their unified direction under civilian control of the Secretary of Defense but not to merge these departments or services; to provide for the establishment of unified or specified combatant commands, and a clear and direct line of command to such commands; to eliminate unnecessary duplication in the Department of Defense, and particularly in the field of research and engineering by vesting its overall direction and control in the Secretary of Defense; to provide more effective, efficient, and economical administration in the Department of Defense; to provide for the unified strategic direction of the combatant forces, for their operation under unified command, and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an overall armed forces general staff.

50 U.S.C. sect 402 provides as follows:

There is established a council to be known as the National Security Council (hereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided*, That in his absence he may designate a member of the Council to preside in his place.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

The Council shall be composed of —

(1) the President;

(2) the Vice President

(3) the Secretary of State;

(4) the Secretary of Defense;

(5) the Director for Mutual Security;

(6) the Chairman of the National Security Resources Board; and

(7) the Secretaries and Under Secretaries of other executive departments and of the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.

(b) In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council —

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President. The executive secretary, subject to the direction of the Council, is authorized, subject to the civil-service laws and the Classification Act of 1949, to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

(d) The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

50 U.S.C. sect 403 provides as follows:
(Pertinent Text)

(a) There is established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence who shall be the head thereof, - - -

50 U.S.C. sect 403a provides as follows:

When used in sections 403b - 403j of this title, the term —

(a) "Agency" means the Central Intelligence Agency;

(b) "Director" means the Director of Central Intelligence;

(c) "Government agency" means any executive department, commission, council, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government.

50 U.S.C. sect 403b provides as follows:

The Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency, of such design as the President shall approve, and judicial notice shall be taken thereof.

50 U.S.C. sect 403c provides as follows:
(Pertinent Text)

(a) In the performance of its functions the Central Intel-

ligence Agency is authorized to exercise the authorities contained in sections 151(c) (1-6), (10), (12), (15), (17)- 155 and 159 of Title 41.

NOTE: (Title 41 sects 151-162 "Procurement of Supplies and Services by Armed Services" was repealed Aug. 10, 1956. Since all of 403c is related to the Title 41 statute, the balance of 50 U.S.C. 403c is being omitted. There is no "procurement authority" statute that would govern the manner in which this agency makes large purchases as far as the writer knows. W.B.R.)

50 U.S.C. sect 403f provides as follows:
(Pertinent Text)

In the performance of its functions, the Central Intelligence Agency is authorized to —

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget, for the performance of any of the functions or activities authorized under sections 403 and 405 of this title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a-403j of this title without regard to limitations of appropriations from which transferred;

(b) Exchange funds without regard to section 543 of Title 31;[1]

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1 Section 543 of Title 31 provides as follows:
(Pertinent Text)

No exchange of funds shall be made by any disbursing officer or agent of the Government, of any grade or denomination whatsoever, or connected with any branch of the public service, other than an exchange for gold, silver, United States notes, and national-bank notes; and every such disbursing officer, when the means for his disbursements are furnished to him in gold, silver, United States notes, or national-bank notes, shall make his payments in the moneys so furnished; or when they are furnished to him in drafts, shall cause those drafts to be presented at their place of payment, and properly paid according to law, and shall make his payments in the money so received for the drafts furnished, unless, in either case, he can exchange the means in his hands for gold and silver at par. - - -

(c) Reimburse other Government agencies for services of personnel assigned to the Agency, and such other Government agencies are authorized, without regard to provisions of law to the contrary, so to assign or detail any officer or employee for duty with the Agency;

50 U.S.C. sect 403j provides as follows:

(a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including —

(1) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; health-service program as authorized by law (5 U.S.C. 159); rental of news-reporting services; purchase or rental and operation of photographic, reproduction, cryptographic, duplication and printing machines, equipment and devices, and radio-receiving and radio-sending equipment and devices, including telegraph and teletype equipment; purchase, maintenance, operation, repair, and hire of passenger motor vehicles, and aircraft, and vessels of all kinds; subject to policies established by the Director, transportation of officers and employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment, where such personnel are engaged in work which makes such transportation necessary, and transportation in such equipment, to and from school, of children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is not available; printing and binding; purchase, maintenance, and cleaning of firearms, including purchase, storage, and maintenance of ammunition; subject to policies established by the Director, expenses of travel in connection with, and expenses incident

to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit in the conduct of the work of the Agency; association and library dues; payment of premiums or costs of surety bonds for officers or employees without regard to the provisions of section 14 of Title 6; payment of claims pursuant to Title 28; acquisition of necessary land and the clearing of such land; construction of buildings and facilities without regard to sections 259 and 267 of Title 40; repair, rental, operation, and maintenance of buildings, utilities, facilities, and appurtenances; and

(2) supplies, equipment, and personnel and contractural services otherwise authorized by law and regulations, when approved by the Director.

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

Paragraph Four of Complaint:

18 U.S.C. 1001 provides as follows:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations; or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000.00 or imprisoned not more than 5 years, or both.

Paragraph Five of Complaint:

The Code of Federal Regulations title 31 section 270.3(a)(b) provides as follows:

(a) *Procedure.* A written request for an identifiable record shall be addressed to the Commissioner of Accounts, Washington, D. C. 20226. A request presented in person shall be made at the office of the Operating Facilities Officer, Room 100, Treasury Department, Annex 1, Pennsylvania Avenue at Madison Place.

(b) *Determination of Request.* Determination as to the disclosure of a record request shall be made, subject to appeal to the Commissioner of Accounts, by the head of the division in which the record belongs and by the Assistant Commissioner for Records in the Office of the Commissioner. The decision of the Commissioner shall constitute final agency action, unless he refers the appeal to the Fiscal Assistant Secretary, in which case the decision of the Fiscal Assistant Secretary shall constitute final agency action.

Paragraph Six of Complaint:

Title 5 U.S.C.A. 552(a)(3) has been set out page 26a & 27a this Appendix.

Title 28 U.S.C. sect. 2282 provides as follows:

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

Title 28 U.S.C. sect. 2284 provides as follows:
(Pertinent Text)

In any action or proceeding required by Act of Congress to

be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) - - -

(3) - - -

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

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Title 28 U.S.C. sect. 1361 provides as follows:

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

Title 28 U.S.C. sect. 2201 provides as follows:

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Title 28 U.S.C. sect. 2202 provides as follows:

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

— END OF APPENDIX D —

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-894

WILLIAM B. RICHARDSON, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner filed this suit in the United States District Court for the Western District of Pennsylvania, requesting the convention of a three-judge court to declare that certain sections of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403a *et seq.*, are repugnant to Article I, Section 9, clause 7 of the Constitution (Pet. App. 16a–17a).[1] The district court

[1] Prior to instituting this suit, petitioner had filed a similar suit which was dismissed by the district court on standing grounds. *Richardson* v. *Sokol*, 285 F. Supp. 866 (W.D. Pa.). The Third Circuit affirmed that judgment on the jurisdictional ground that respondent had failed to allege that $10,000 was in issue and denied leave to amend the complaint (409 F. 2d 3), and this Court denied a petition for a writ of certiorari (396 U.S. 949). Petitioner then filed this suit alleging jurisdiction under, *inter alia*, 28 U.S.C. 1361.

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dismissed the action, concluding that under *Flast* v. *Cohen*, 392 U.S. 83, petitioner lacked standing as a taxpayer to challenge the Act and that the case presented non-justiciable political questions (Pet. App. 18a–20a). Prior to a decision on appeal, petitioner filed a petition for a writ of certiorari before judgment, asking this Court to decide the issues of standing and justiciability as well as the merits. This Court denied certiorari. 404 U.S. 991.

The court of appeals then reversed the judgment of the district court, holding that petitioner had standing and remanding the case with directions to convene a three-judge court to consider both the political question issue and the case on the merits. 465 F. 2d 844.[2] The United States has filed a petition for a writ of certiorari to review that decision. *United States* v. *Richardson*, No. 72–885.

Petitioner has now also filed a petition for a writ of certiorari from the decision below, asking in effect that the Court consider the question of justiciability and the merits prior to a decision by the three-judge court. Neither court below has yet addressed itself to the merits, and the court of appeals expressly left the question of justiciability to the three-judge district court. In these circumstances the petition should be denied, because petitioner has not shown that this

[2] The district court stayed the convention of a three-judge court pending disposition of the government's petition for a writ of certiorari. On September 26, 1972, the Third Circuit denied petitioner's petition for mandamus to compel the immediate convention of a three-judge court.

case is of such imperative public importance to require immediate settlement in this Court of issues not yet considered below. See Rule 20 of the Rules of this Court. See, also, our memorandum in opposition in *Richardson* v. *United States,* No. 71–433.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1973.

U.S. GOVERNMENT PRINTING OFFICE: 1973